

## **Remarks/Arguments**

Claims 1-3 and 5-11 are now pending in this application. In the April 9, 2007 Office Action, Claims 1-3 and 5-11 were rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 6,960,201 to Cumbie (hereinafter “*Cumbie*”), in view of U.S. Patent No. 5,738,678 to Patel (hereinafter “*Patel*”).

For the reasons set forth below, the applicant respectfully requests reconsideration and immediate allowance of this application.

### **Telephone Interview**

A telephone interview was conducted with Examiner Farah on August 7, 2007. The substance of the interview is outlined by the discussion below with respect to the claim rejections. Examiner Farah agreed with the applicant on the points addressed below with respect to the prior art of record and stated that an additional search would be required.

### **Claim Rejections Under 35 U.S.C. §103(a)**

#### **Independent Claims 1 and 3**

In the April 9, 2007 Office Action, independent claims 1 and 3 were rejected under 35 U.S.C. §103(a) as being obvious over *Cumbie* in view of *Patel*. The applicant respectfully submits that the cited combination does not teach, suggest, or describe each recitation of these claims. Specifically, the cited combination fails to describe or suggest “directing a UV light source and an associated UV transmissive cover at an area of a human nail to be disinfected,” as recited by claim 1, and “a UV transmissive protective cover that fits over the light source,” as recited by claim 3. As discussed during the telephone interview, the applicant submits that neither *Cumbie*, nor *Patel*, nor a combination of the two references describes a protective cover as recited by claims 1 and 3. The April 9, 2007 Office Action states, “although *Cumbie* teaches a UV transmissive cover, his cover is not connected to the light source or the supporting handpiece.” This statement actually supports the applicant’s assertion. No further discussion in support of this rejection was made in the April 9, 2007 Office Action.

However, in the February 7, 2006 Office Action, the above-quoted statement was followed with “However, the examiner takes an official notice that it would have been obvious to one skilled in the art at the time of the applicant’s invention to incorporate the UV transmissive cover into the treatment device. The court affirmed ‘that use of one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice.’” In response, the applicant traversed the official notice and requested that a reference be provided in the subsequent Office Action in support of the official notice. However, no reference was provided in the April 9, 2007 Office Action. Consequently, in the telephone interview of August 7, 2007, the Examiner agreed to provide a reference.

In addition, a point that was not discussed and agreed upon in the August 7, 2007 telephone interview, the applicant would like to point out that even if a reference could be provided to support the official notice taken by the Examiner that it would have been obvious to one skilled in the art to incorporate the UV transmissive cover described by *Cumbe* into the *Cumbe* treatment device due to the suggestion that the use of a one-piece construction is a matter of obvious engineering choice, the resulting *Cumbe* device would still not describe or suggest the recitations of independent claims 1 and 3. The *Cumbe* cover actually prevents portions of the patient’s skin surrounding the infected area from receiving radiation. There are apertures in the cover through which the *Cumbe* device irradiates the infected area. See *Cumbe*, col. 6, lines 57-60. Therefore, the cover described by *Cumbe* would never be directed at an area of a human nail to be disinfected as recited by claim 1 since the *Cumbe* cover would prevent the nail from being disinfected. Similarly, the cover described by *Cumbe* would never fit over the light source as recited by claim 3 since the *Cumbe* cover would again prevent the light source from reaching the infection.

Moreover, the applicant also respectfully submits that the cited combination fails to teach, suggest, or describe, “sensing that the device is held by an adult hand,” as recited by claim 1, and “a safety sensor that prevents the unit from being turned on until an adult hand properly holds the device,” as recited by claim 3. As discussed and agreed upon during the telephone interview, *Patel* describes a pressure sensor that detects when the *Patel* device is pressed against a tooth. Even if there was motivation to combine this sensor with the *Cumbe* device, and the applicant submits that there would not be since the *Cumbe* device is not pressed against the infection prior to activation of the radiation, then the resulting device would still not sense that

the device is held by an adult hand, and would not be prevented from being turned on until an adult hand properly holds the device, as is recited by claims 1 and 3. Accordingly, for at least these reasons, the applicant submits that independent claims 1 and 3 are allowable over *Cumbe* in view of *Patel*.

Dependent Claims 9 and 11

Dependent claims 9 and 11 were rejected under 35 U.S.C. §103(a) as being obvious over *Cumbe* in view of *Patel*. The applicant respectfully submits that the cited combination does not teach, suggest, or describe any recitation of these claims. As discussed during the telephone interview, neither *Cumbe*, nor *Patel*, nor a combination of the two references describes the use of a safety sensor that “comprises a capacitive sensor” or “determining by way of a capacitive sensor whether the device is held by an adult hand,” as recited by claims 9 and 11, respectively. As discussed above, the only safety sensor described by the cited art is a pressure sensor described by *Patel*. Because the pressure sensor is not equivalent to a capacitive sensor, and because dependent claims 9 and 11 depend from allowable independent claims 3 and 1, the applicant submits that dependent claims 9 and 11 are allowable over *Cumbe* in view of *Patel*.

Dependent Claims 2, 5-8, and 10

Because the cited art fails to teach, suggest, or describe the recitations of claims 2, 5-8, and 10 and because claims 2, 5-8, and 10 depend from allowable independent claims 1 and 3, dependent claims 2, 5-8, and 10 are allowable over the cited art.

**Conclusion**

In view of the foregoing amendment and remarks, the applicant respectfully submits that all of the pending claims in the present application are in condition for allowance. Reconsideration and reexamination of the application and allowance of the claims at an early date is solicited. If the Examiner has any questions or comments concerning this matter, the Examiner is invited to contact the applicant's undersigned attorney at the number below.

Respectfully submitted,

HOPE BALDAUFF HARTMAN, LLC

/Michael J. Baldauff, Jr./

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Michael J. Baldauff, Jr.  
Reg. No. 57,998

Hope Baldauff Hartman, LLC  
1720 Peachtree Street, N.W.  
Suite 1010  
Atlanta, Georgia 30309  
Telephone: 404.815.1900

